IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6051 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MANILAL UKABHAI RATHOD

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6051 of 2002

MR VIJAY H PATEL for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has

challenged the legality and validity of the order of detention dated 12.01.2002 passed against him by the District Magistrate, Bharuch, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act).

2. The petitioner is one of the co-accused detained under the PASA Act branded as "dangerous person" for the crime registered with Padra Police Station being CR No. I.43/2001 dated 30.10.2001 under Sections 285, 336, 379, 511, 120-B, 304, 381, 337, 447, 438, 34, 35, 37, 111, 113, 199 of the IPC, Sections 3(1)(2), 4, 13 of Damages to Public Properties Act and Section 15(2) of Indian Petroleum Pipeline Act.

3. Ld. Counsel Mr. Patel appearing for the petitioner has pointed out that four co-accused persons connected with the said crime were also detained under the PASA Act by the very authority and they are set at liberty by the Court by quashing and setting aside the order of detention passed against those four co-accused persons. Computer copy of the oral judgment in respect of one of the co-accused delivered by this Court in Spl.Civil Application No. 2882/2000 (Coram: R.P.Dholakia, J) decided on 8.6.2002 is tendered before this Court by ld. counsel Mr. Patel which is taken on record. Mr. Patel has taken me through the number of grounds raised by the petitioner while assailing the validity of the order of detention and decisions referred in the memo. However, Mr. Patel has mainly focussed his arguments on the ground mentioned in para-05 of the petition. I would like to reproduce the same which reads as under:-

> " The petitioner submits that there is one offence alleged to have been registered against the petitioner and that incident said to have been occurred on 30.10.2001. The petitioner submits that the petitioner is released on bail on 19.11.2001 by the Competent Court. The petitioner further states that first order of the detention is passed on 30.11.2001 and second order of detention is passed on 12.1.2002. The petitioner also submits that even if the date of the first order is taken into consideration, then also there is a delay in passing the first order of detention and also obviously, the second order of detention is also bad in law on the said Count."

4. While enlarging the arguments on this point, Mr.

Patel has submitted that the order passed by the detaining authority is delayed order and this delay would affect adversely the legality and validity of the order of detention. Referring to the decision in the case of Elesh Nandubhai Patel v/s Commissioner of Police, Ahmedabad City & Others, reported in 1997(1) GLH P.381, it is submitted that the date of incident and the date of arrest of the petitioner should be considered as relevant date and no action either of sponsoring authority or of detaining authority would wipe out the delay and delay caused cannot brought into the proximity with the date of detention. It would be beneficial to quote relevant part of para-21 of the above-cited decision wherein this Court has said :-

" There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v/s State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v/s S. Rammurthy reported in 1993(2) Suppl.SCC 61."

5. Similarly situated accused and detenu has been set at liberty by this Court vide order dated 21.6.2002 while dealing with Spl.C.A. No. 4919/2002. Reply affidavit filed today by the ld. AGP Mr. HH Patel which is taken on record merely deals with the submissions made in reference to the earlier order of detention dated 30.11.2001 and revocation thereof by the State Government on 11.1.2002. It is true that on same grounds a fresh order of detention can be passed and, therefore, there is nothing wrong technically in passing the subsequent order of detention immediately on the next day i.e. on 12.1.2002. But in view of the aforesaid discussion, this petition shall have to be allowed.

6. Mr. Patel, ld. counsel appearing for the petitioner has rightly submitted that the present petitioner should be set at liberty on the ground of delay in passing the order under challenge and also on the ground of parity as well.

7. Ld. AGP Mr. Patel, placing reliance on the decision of this Court in the case of Premsing @ Pallu Jesing Rajput v/s State of Gujarat & Ors., reported in

1999(1) GLH Page 648, has submitted that the order of detention should not be quashed on the ground of delay in passing the order of detention, but ratio of the above-cited decision would not help the respondents as this very Court, in view of the set of facts available in the present case, has allowed the petition on the same ground while dealing with Spl.C.A. No. 2882/2002 decided on 8.5.2002. So, there cannot be two conflicting findings in the same case especially when the respondents are meeting with the case based on same facts. It is not the say of the respondents that earlier decision of the ld. Single Judge in Spl.C.A. No. 2882/2002 has been challenged by way of Letters Patent Appeal. When respondents have accepted the findings arrived at by the ld. Single Judge in aforesaid Spl.C.A. No. 2882/2002 in one case, the findings would at least be binding to the respondents, unless the case of the present petitioner is on some different footing.

8. In view of the facts and circumstances of the case and the fact that more than one co-accused detained under PASA have already been released by this Court by quashing and setting aside the order of detention passed under PASA Act, the order of detention requires to be quashed on the ground of detention. When the order of detention came to be quashed by this Court in one of the petitions filed by the co-accused, officers of the department were present in the Court and the facts of the case and crime registered by the police were considered at length. Hence, on the ground of parity, order of detention requires to be quashed and set aside. It is submitted that the petitioner has been granted bail by the competent court, but to the best information available to the ld. counsel, till date the order of bail is neither cancelled by the same Court or by the higher forum. On the ground of delay in passing the order of detention, the impugned order of detention requires to be quashed and set aside.

9. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 12.01.2002 passed by the District Magistrate, Bharuch, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

07.08.2002 [C.K. BUCH, J]

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